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No. 81-475

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

EASTERN CONFERENCE OF TEAMSTERS,

Cross-Petitioner,

versus

RONALD SINE AND LARRY DANNER,

Cross-Respondents.

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Is not the Judgment of the United States Court of Appeals in Case No. 76-1201, 1202 binding on the parties so as to establish a breach of contract by the employer under the principle of res judicata.

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This Brief filed by employees Sine and Danner opposes the Cross-Petition of the Eastern Conference of Teamsters Labor

Organization, sued by Sine and Danner for breach of duty of fair representation. (The Cross-Petition has been consolidated with employees' Petition to this Court in No. 81-314). Both Petition and Cross-Petition raise the question of the Statutes of Limitations to be applied to suits for breach of duty of fair representation against labor organizations and against employers for breach of collective bargaining agreements. The United States Court of Appeals in its Decision reported at 644 F2d 997, held that the 30-day Statute of Limitations of the Maryland Arbitration Act barred the contract action against the employer, but not the fair representation claim, against the Union, since the Circuit Court remanded to the District Court for reconsideration of the fair representation issue. Employees here oppose the Cross-petition of the Union which contends for application

of the same Statute of Limitations as that applied to the employer, "if (The Supreme Court of the United States) grants a Writ in Case No. 81-314 (Employees' Petition)." (Cross-Petition Page 9, Matter in parentheses and emphasis supplied).

Employees contend that the effect of the Fourth Circuit Court of Appeals decision in remanding the case for trial against the Union, is to leave open to employees a perfectly viable claim of unfair representation in the nature of malpractice against the Union, coupled with a breach of contract by the employer, albeit the latter was held barred. With great respect and utmost deference to the dissenting opinion of MR. JUSTICE STEVENS in United Parcel Service v. Mitchell U.S. 101 S.Ct. 1559, footnote 4, without an underlying breach of contract by the employer there can be no damages and no recovery in a suit for breach of duty of fair

representation.

This requires a supplementation by employees of the Union's Statement of the Case. The "malpractice" charged by employees against The Union in this suit consisted, in part, of the Union's failure to argue forcefully to the arbitrator the res judicata effect of the Fourth Circuit Court of Appeals decision in Case No. 76-1201, 1202, and the Union attorney's admitted failure to read employees' winning brief in that case or to file it with the arbitrator or argue it. In addition, the Union represented conflicting interests in Sine and Danner's arbitration by representing high seniority employees (See Petitioners' Appendix in No. 81-314, P. 52). Obviously, the Union's failure to seek U. S. District Court timely review of the Arbitrator's

decision is an additional basis for the allegation of "malpractice," - "unfair representation."

Open hostility to the employees has been manifested by the Union for almost ten years, first on The Record in Case No. 76-1201, 1202, and in this case by the statements of Conference Employee Shelton who stated no (expletive) lawyer was going to run his Committee (after the Union was threatened with suit if it failed to send the case to arbitration) and Conference Employee Neidig's remark that employees would be old men with green beards before they got any back pay.

SUMMARY OF ARGUMENT

I. The Union's contention that employees have no claim against the Union once the suit against the employer is time barred is incorrect.

II. The defense concerning exhaustion of internal union procedures is not available to the Union in this case.

III. Whether this action proceeds against the Union alone or the Union and the employer, this Court should rule that the Decision in Case No. 76-1201 establishes a breach of the collective bargaining agreement, binding on the parties under the principal of res judicata.

ARGUMENT

The Union contends that the same Statute of Limitations should be applied to both Union and Employer because the Union claims there can be no recovery if suit against the employer is time-barred. This is not the law, Cross-Respondent contends. See Smart v. Ellis Trucking (CA 6, 1978) 508 F2d 215 Cf, dissenting opinion of MR. JUSTICE STEVENS, Note 4, United Parcel Service v. Mitchell, U.S. 101 S. Ct. 1559 , 1981. Sear v.

Cadillac Automobile Co., (CA 1, 1981) 107 L.R.R.M. 3218, Davidson v. Roadway Express (CA 7, 1981), 107 L.R.R.M. 2441. See also Nevils v. McDowell Contractors (U.S.D.C./TENN. 1981) Civil No. 80-3263. As this Court has repeatedly stated, the employee can sue the Union or the employer or both; in each case the burden is the same, there must be proof of both a breach of duty of fair representation and a breach of contract. If the Union was right in this case, it could escape liability by committing the most blatant act of unfair representation by letting the Statute of Limitations lapse (as it has done, ostensibly, at this stage of the case at bar, by failing to sue within thirty days to set aside the arbitration award). It is submitted that the lower Court was correct in holding, impliedly, that a different statute of limitations applies

to the Union than that applied to the employer.

However, the lower Court erred, Cross-Respondents submit, in declining to rule that its original final judgment in Case 76-1201, 1202 was res judicata as to the liability of both Employer and Union, whether time barred or not. As to this, the law is clear, as this Court has recently decided. Parklane Hosiery Company, Inc. v. Leo M. Shore (1979) 439 U.S. 322, 99 S.Ct. 645. Thus, for purposes of determining damages against the Union on remand, the Fourth Circuit Court of Appeals should have reversed the District Court on its denial of res judicata effect of the Fourth Circuit Judgment in Case No. 76-1201, 1202 (Appendix B-12, C 4, 5, Appendix to Petition 81-314, P. 50). This Court should exercise its power of supervision over the Circuit Court of Appeals and reverse that Court's judgment on the

res judicata point.

Again, the Fourth Circuit's reversal of the judgment against the Union and in the employees' favor, implies as a matter of law, employees contend, that there is an underlying breach of contract by the employer. Plainly, this is based on the res judicata effect of the prior judgment. Otherwise, remand for a trial if the employer had not breached the contract would be a useless proceeding with no damages in the form of back pay.

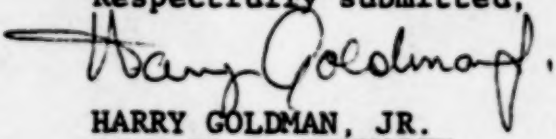
As to exhaustion of internal Union procedures, the Union's attorney had determined not to file suit to set aside the arbitration award and refused the employees demand to do so. With only 30 days to sue, or 90 to 120 days, if employees prevail in Case No. 81-314, nowhere does Cross-Petitioner demonstrate that internal procedures could be exhausted in time to avoid limitations, as the Union must. See

Clayton v. International Union, UAW U.S. 101 S.Ct. 2088, 1981, No. 80-5049, and the dissenting Opinion of MR. JUSTICE REHNQUIST suggesting a four-month exhaustion requirement. Moreover, remedies under the Teamsters Constitution involved in the case at bar have many times been weighed in the balance, as to adequacy, and found wanting by the Courts. See Chambers v. Local 639, Teamsters (CADC, 1978), 558 F2d 375, 387, 388, Miller v. Gateway Transportation Co., and Teamsters Local 710, (CA 7, 1980) 616 F2d 272, 275. In this case, in addition, the hostility of the Union toward employees is palpable and proved by the Record. A requirement of exhaustion of internal Union remedies, Cross-Respondents submit, is simply not in the case and Cross-Petitioners attempt to raise it is frivolous.

CONCLUSION

For the aforegoing reasons Petitioners in No. 314 and Cross-Respondents here pray that the Cross-Petition be denied.

Respectfully submitted,



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